

From: Joel 'Twisty' Nye
To: Microsoft ATR
Date: 1/23/02 4:44pm
Subject: The Microsoft Antitrust Settlement

Joel Nye

628 Buckeye St

Hamilton, OH 45011-3449

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Dear Sirs and Honorable Judges of the United States Department of Justice:

I write this letter regarding the Revised Proposed Final Judgement (PFJ) in the Antitrust Lawsuit of Microsoft Corporation. I am an Information Technology Specialist serving the Salvation Army for its Divisional Headquarters in Cincinnati, Ohio. As such, an employee and resident in the state of Ohio, and a customer of licensed software from Microsoft and other manufacturers throughout the IT industry, I find myself significantly effected by this judgement. In accordance with the Tunney Act, my comments are entered for public record within the 60 day period allowed.

While this PFJ does an effective job of tying the hands of the govenment from opening Microsoft's trade secrets, it does an inadequate job of bringing Microsoft's behavior in line with the law, and fails to impede Microsoft's anticompetitive behavior with rival software manufacturers and organizations, nor even impede its adversarial role against its own partners and customers. In short, I think it does customers like myself a disservice by encouraging continued anticompetitive behavior in Microsoft.

The greatest failure of the PFJ is its discrimination against users of non-commercial software. Be it Free Software, Open Sourced, Shareware, Public Domain binaries, Web Applets, this PFJ permits Microsoft to advance its own interests above the freedoms of the customers found to suffer from an anticompetitive market. The American public and scientific communities are providing people the freedom to actually own software that cannot be legally wrested from them, while Microsoft's licenses keep ownership, control, and choice out of the public's hands.

In light of Microsoft's illegally obtained monopoly, the people must be permitted the freedom to create their own alternatives... Such is the cycle of history, democratizing a technology which has allowed dominant power to rift "haves" from "have nots."

In section III.A under Prohibited Conduct, Microsoft's behavior against OEMs is regulated, almost. The same section quickly excuses Microsoft to "enforcing any provision of any license with any OEM or any intellectual property right that is not inconsistent with this Final Judgment." I must emphasize the wording "any license," for it is by their licenses that Microsoft exercises their power to discriminate and exclude freedom. While they must be free to innovate, what is at issue is their much exercised "freedom to inundate."

Further under section III, parts D through G further regulate behavior of Microsoft from monopolizing middleware and communications protocols of its Windows products, almost. Yet this regulation is conditionally invalidated by the phrase, "This Section does not apply to any agreements in which Microsoft licenses intellectual property in from a third party." So by licensing, even if at no cost to Microsoft, and at the discrimination of all others, Microsoft could indeed continue to monopolize protocols with minimal formality. With such careless qualification of the DoJ's regulation, it is a wonder why there is any wording of regulation at all.

Under III.J.1, the monopolization of proprietized formats is thrown out with "J. No provision of this Final Judgment shall:... Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of... software licensing, digital rights management, encryption or authentication systems,..." Again, I must restate that software licenses are the contracts by which the customers' freedoms are being arrested.

The remaining sections of enforcement are inconsequential without the repair of behavioral regulation.

I would like to see them further regulated from "Content Discrimination," a practice by which their client applications, such as Internet Explorer, do willingly replace the data from the internet, such as an error 404 web page which may or may not be customized to a web server's extreme capabilities or needs, substituting content of Microsoft's own choosing. This has profitted Microsoft's self-serving goals, such as promoting their MSN network services, but it violates the efforts of the web server to provide customized content to the service of the customer, which I view as a blatant impropriety of rights to Freedom of Speech in the publishing world of the internet.

Another example of Microsoft's content discrimination, and of licensing

abuse, can be viewed at
<http://www.vcnet.com/bms/departments/dirtytricks.shtml> . It summarizes
the targetting of a business opponent in discrimination of emails from
bluemountain.com through a beta program of Microsoft Outlook. While
they are free to disclaim behavior of such a program in that stage of
its development, it is clearly an abuse of trust when free speech is
expected to be delivered.

Please do the computing public a favor by striking down this disservice
of a settlement. Thank You.

- Joel Nye
IT Specialist, The Salvaition Army